

IN RE: ) BK. NO: 07-41092-BTR-7  
 )  
ROBERT EDWIN JACOBSEN )  
 )  
D E B T O R )

TRANSCRIPT OF PROCEEDINGS

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NATIONAL COURT REPORTERS (214) 651-8393

1	<u>I N D E X</u>	
2		<u>PAGE</u>
3	Exhibit Index	3
4	<u>ROBERT JACOBSEN</u>	
5	CROSS-EXAMINATION	
	BY: Mr. Lewis	32
6	BY: Mr. Levick	43
7	<u>MICHAEL CRANE</u>	
8	DIRECT EXAMINATION	
	BY: Mr. Levick	62
9	CROSS-EXAMINATION	
	BY: Mr. Jacobsen	67
10	<u>LARRY LEVICK</u>	
11	DIRECT EXAMINATION	
12	BY: Mr. Levick	80
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T I N D E X</u>	
2		<u>PAGE FIRST REFERENCED</u>
3	Exhibit Number 1	11
4	Jacobsen Exhibit Number 1	29
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1                   P R O C E E D I N G S

2                   COURTROOM DEPUTY: Page 14, number 23, Robert  
3 Jacobsen. Case 07-41092. Motion to require Chapter 7  
4 Trustee to abandon property and another motion to require  
5 Chapter 7 Trustee to abandon real property.

6                   THE COURT: You may proceed.

7                   MR. LEVICK: Your Honor, if I may, it's Larry  
8 Levick for the Chapter 7 Trustee, Christopher Moser.

9                   THE COURT: All right.

10                  MR. LEWIS: Your Honor, John Lewis on behalf  
11 of John and Bernadette Sramek, the two largest creditors in  
12 the case.

13                  THE COURT: All right.

14                  MR. JACOBSEN: And I'm Robert Jacobsen, the  
15 debtor.

16                  MR. LEVICK: It's a little difficult to figure  
17 out exactly what some of the relief requested and the motions  
18 are a little bit similar. But for Mr. Lewis' schedules,  
19 schedules purposes, he's really here for the Tice Valley  
20 hearing. And I think that's what Ms. Malikyar is on the  
21 phone for is the Tice Valley hearing. So I thought that we  
22 might take that first?

23                  THE COURT: Any problem with that?

24                  MR. JACOBSEN: No, that will be fine.

25                  THE COURT: All right. You may proceed, then.

1                   MR. JACOBSEN: Your Honor, the Tice Valley  
2 property -- let me give you a little bit of background  
3 because you may be a little bit new to this.

4           I filed bankruptcy myself not with my wife. My wife  
5 owned a house in Tice Valley as her sole and separate  
6 property. I filed my schedules. I amended my schedules. I  
7 showed no homestead at all on my amended schedules.

8           My wife, on the other hand, does homestead her house  
9 which I showed as an exhibit, the last -- Exhibit A on my  
10 motion showing tax records where it's homesteaded. I could  
11 not claim a homestead on that house because at the time I  
12 didn't consider it to be my house, but it has always been  
13 homesteaded by her. She bought it in 2001, I believe. And  
14 it's never been rented out.

15          When I filed bankruptcy, in the process of going  
16 through it, we came to a stipulated agreement that we would  
17 consider our property community property rather than go ahead  
18 with hearing -- trial on another matter. And so the property  
19 became community property at that time. But the house has  
20 always been homesteaded in her name. And as such, it's  
21 protected.

22                   THE COURT: Now, are you an attorney, sir?

23           MR. JACOBSEN: No, I'm not. I'm trying my  
24 best, Your Honor.

25          But it's always been homesteaded as her home. She put

1 it on the market to sell it. The Court stopped the sale.  
2 And the prospective buyers actually moved in and rented --  
3 rent before close type of business, which has been dragging  
4 on until now.

5 That's pretty much it.

6 THE COURT: All right.

7 MR. LEVICK: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. LEVICK: I'll give you my little take on  
10 the background of this case. It's been a very difficult and  
11 contentious case for the Trustee.

12 Mr. Jacobsen filed a Chapter 13 petition almost two  
13 years ago in this court. He immediately in that case filed a  
14 motion to sell the Tice Valley property for 1.290 million to  
15 the current tenants, the Davis'. I know he said earlier in  
16 his opening or his -- that the property has never been rented  
17 out, but the Davis' have lived there for years. They  
18 testified in this court about living there and they've been  
19 paying rent since they've been living there. And they're  
20 still living there as tenants.

21 Any way --

22 THE COURT: Who are they paying rent to?

23 MR. LEVICK: They're paying the rent to the  
24 Trustee.

25 THE COURT: Okay.

1                   MR. LEVICK: And, Your Honor, the property is  
2 encumbered by three liens. The first lien is the lien of  
3 Greenpoint, which is now Bank of America. And the  
4 approximate amount of that lien is \$800,000. The second lien  
5 was an alleged Belizean company called Coast Capital. And it  
6 was owed about \$200,000. And then there was a third lien  
7 from Wells Fargo which was owed \$350,000, Your Honor.

8                   When Mr. Jacobsen tried to sell this property --

9                   THE COURT: I'm sorry, what was the amount of  
10 their lien?

11                   MR. LEVICK: Wells Fargo, 350,000. Now, I  
12 know it looks a little shaky on the equity side here, but by  
13 the end of my presentation you will see that there is much  
14 equity in this property for the Trustee, Your Honor.

15                   Mr. Jacobsen tried to sell this property in the 13 to  
16 the Davis' for 1.29 million. Everyone was on board with  
17 this; the Chapter 13 Trustee, Mr. Jacobsen, Mr. Lewis who  
18 represents the largest creditor in this case, the Srameks,  
19 who have an allowed claim in this case for over 1.7 million.  
20 All they wanted to have happen at this closing was to have  
21 money escrowed for the second lien holder, Coast Capital.  
22 It's a little interesting, to say the least, to have a second  
23 lien holder be a Belizean corporation who hasn't made an  
24 appearance in the case whose documents look a little  
25 questionable, at best, to just pay them outright unless they

1 can get their lien proved up. So the idea would be, just  
2 like we've done in a million bankruptcies; get the sale done,  
3 escrow the money, fight about it later.

4 Well, when Mr. Jacobsen learned that the second lien  
5 holder couldn't be paid at closing, he withdrew the motion to  
6 sell. Now, he was filing the motion to sale, even though  
7 later he claimed it wasn't his property, but somehow he filed  
8 it. So that sale fell through because Mr. Jacobsen withdrew  
9 it, even though that would have brought in a lot of money for  
10 the estate and the money could have been escrowed for Coast  
11 Capital to come in if they had a good valid lien to try to  
12 prove it up. but it was sort of interesting because I've  
13 never -- I mean, I've never heard of the debtor killing the  
14 sale for such a reason. It just leads to all sorts of  
15 questions about the relationship Mr. Jacobsen must have had  
16 with Coast Capital, which comes into play later in the case.

17 So then Mr. Jacobsen moved to dismiss his case in the  
18 fall of that year. Mr. Lewis objected. There was an  
19 evidentiary hearing. And Judge Rhoades found that  
20 Mr. Jacobsen had been acting in bad faith in his bankruptcy.  
21 And because of his bad faith, she converted the case to  
22 Chapter 7 in the fall of that year. And Mr. Moser was  
23 appointed the Chapter 7 Trustee. Mr. Moser hired our firm.

24 Later on, among all the issues in the case, we  
25 attempted and filed another motion to sell to the Davis'



1 again. The economy was a little bit different when we were  
2 trying to sell it to them. The Davis' had certain  
3 information and comps. And we filed the motion to sell it to  
4 the Davis' for 1.50 million with the Davis' picking up all of  
5 the closing costs, all of the commissions, all of the real  
6 estate taxes, and any and all closing costs that were there.  
7 And we had a big hearing about a year ago on this, Your  
8 Honor. It was last June.

9 And sure enough, Ms. Malikyar objects. And her  
10 objection is very interesting to us. She says, Wait a  
11 second. I own that property. Despite the fact that my  
12 husband put it on the bankruptcy schedules under penalty of  
13 perjury. I own that property. Despite the fact that he  
14 tried to sell it before as his own in the Chapter 13, I own  
15 the property. And the reason I own that property is I have a  
16 post-nuptial agreement I executed with my husband on  
17 September 11th, 2001. A post-nuptial agreement that's not  
18 recorded in any deed records and a post-nuptial agreement  
19 that's not notarized in any way.

20 So -- also, at this hearing an entity claiming to be  
21 the assignee of Coast Capital called South Shore Capital  
22 claiming to be the second lien holder through a document that  
23 is forged -- obviously forged on its face files an objection  
24 to the sale. They don't show up at the hearing. And later  
25 on Judge Rhoades issues an order to show cause to Robert

1   Jacobsen and to South Shore Capital to come into this court  
2   and explain how such an objection should be filed because it  
3   looks like Robert Jacobsen was behind the filing of the  
4   second lien holder's objection.

5           Now, Your Honor, I had worked out a deal at the end of  
6   that hearing. We could pay the first in full. The second  
7   lien, if it's good, we would escrow the monies. The third  
8   lien holder, Wells Fargo, agreed to take \$10,000 being in a  
9   third lien position on a house in California. And we had it  
10  all worked out. The estate would net some significant  
11  monies. Again, inexplicably the second lien holder didn't  
12  like the idea that they would have money escrowed in full for  
13  them and they objected, or maybe Jacobsen orchestrated the  
14  objection. It just didn't make sense.

15           Jacobsen's objection -- Mr. Jacobsen's objection at the  
16  time was we weren't getting enough money. The property is  
17  worth a lot more money. But what the judge ultimately found  
18  is, and she stated on the record, she did not understand why  
19  the objecting parties did not consent to this sale. That she  
20  was troubled by the fact that there is now this post-nuptial  
21  agreement where Ms. Malikyar is claiming she owns it. And if  
22  she owns it as her separate property, how could the Trustee  
23  sell it. So we the Trustee need to get the title issue and  
24  bring it to a head.

25           So we have some litigation pending. We have a lawsuit

1 against Ms. Malikyar to have the Court declare that we  
2 actually own that property. We also had a complaint pending  
3 against Coast capital to avoid the second lien and preserve  
4 it for our benefit. So in November of last year on the  
5 virtual eve of trial, Mr. Jacobsen and Ms. Malikyar filed --  
6 signed our agreement judgment that's part of this Court's  
7 record in the adversary, and I have a copy for this Court if  
8 you'd like to see it, that shows that Tice Valley is  
9 community property owned by Mr. Moser and has been since the  
10 inception of the case, period.

11 We then proceeded with our litigation against Coast  
12 Capital.

13 THE COURT: I would like to see that when you  
14 get around to it.

15 MR. LEVICK: May I approach now?

16 THE COURT: You may.

17 Okay. We'll call this Exhibit 1 for purposes of the  
18 record. And I assume there's no objection to it being  
19 introduced.

20 MR. JACOBSEN: No objection.

21 THE COURT: It will be admitted. Let me read  
22 it. Just a minute.

23 Okay. You may proceed.

24 MR. LEVICK: So, Your Honor, we get that  
25 judgment in which now the estate clearly owns Tice Valley and

1 we do what Trustees would do. We find a realtor. We still  
2 try and work with Mr. Jacobsen. He wants us to hire a  
3 certain realtor to try to sell the property. We negotiate  
4 with that realtor until we find out that that realtor is an  
5 unscheduled unsecured creditor of Mr. Jacobsen's, which would  
6 disqualify him from being the realtor.

7       So we hire our own realtor, Mr. McLaughlin up in  
8 California who is marketing the property. We meanwhile  
9 proceed with the Coast Capital litigation. And this Court  
10 granted a default judgment by the Trustee against Coast  
11 Capital avoiding the Coast Capital second lien and preserving  
12 it for the estate's benefit. Now, I haven't been able to  
13 upload the final default judgment at this time because the  
14 title issue is a little complicated and I'm trying to get the  
15 title company in California to bless the form of judgment so  
16 there won't be any title issues.

17       So Mr. Moser is now the second lien holder, which means  
18 Wells Fargo, the third lien holder, is well out the money.  
19 We can foreclose them out, should we want to. If this Court  
20 determines Ms. Malikyar has some valid exemption, which I'll  
21 address in a second she doesn't, we can foreclose her out.  
22 So we are the second lien holder.

23       So the only real lien holder out there is Greenpoint,  
24 which is now Bank of America, that is owed \$800,000. He  
25 schedules the property for 1.50 million. Greenpoint hasn't

1 even filed the motion for relief from stay. They don't want  
2 the property. There's no emergency. And we're attempting to  
3 market the property, Your Honor, just like we would in any  
4 Chapter 7.

5 Now, I want to address why this exemption issue is a  
6 red herring, Your Honor. Mr. Lewis has done a lot more  
7 research than I on the California exemptions and he can  
8 address why it's improper, all of the reasons; she wasn't  
9 living there, the sworn bankruptcy schedules indicate  
10 otherwise, and all of the reasons that they have not followed  
11 the California law properly. But the real simple truth is  
12 that the judgment says as of the inception of the bankruptcy  
13 case this property is community property. Because it is  
14 owned by Chris Moser as community property under Section 11  
15 USC 541, property of the estate, Mr. Moser owns the property.  
16 The only -- Ms. Malikyar doesn't own it any more. She cannot  
17 exempt property she doesn't own. The non-filing spouse's  
18 rights are cut off. And it's a little harsh, but that's just  
19 the reality of the situation.

20 I have a cite on that, Your Honor. And I have a copy  
21 of the case for you. It is called the Smith Wholesale Drug  
22 v. McCombs case at 2000 Bankruptcy Lexus 4264, or I have a  
23 West Law cite, as well. And I can bring up a copy of the  
24 case. But the non-filing spouse is just simply out of luck.

25 THE COURT: You also have a copy for

1 Mr. Jacobsen, I assume.

2 MR. LEVICK: No, I don't, Your Honor. I'm  
3 sorry about that.

4 MR. JACOBSEN: Your Honor, he didn't cite  
5 these in his opposition to my motion and I have no idea what  
6 he's --

7 THE COURT: Any reason for that?

8 MR. LEVICK: Well, Your Honor, I had to do --  
9 he -- he put down on his motion that this was set on May 4th.  
10 The notice, if you'll look on your docket, he sent out a  
11 notice to me of May 4th, so I thought we were set on May 4th.  
12 So last week when I was informed like last Thursday or Friday  
13 that we were set today, I was scrambling to get ready for  
14 this. But any way, that's --

15 MR. JACOBSEN: The Court changed the date,  
16 Your Honor, not me.

17 THE COURT: Okay. The Clerk tells me it was  
18 never actually scheduled for May 4th.

19 MR. LEVICK: It as -- no, I understand that.  
20 The notice he sent to me said we were scheduled for May 4th,  
21 so we had it docketed otherwise.

22 And, Your Honor, if I may approach?

23 THE COURT: You may.

24 Mr. Jacobsen, this is a copy of your motion. It just  
25 shows a hearing day of May 4th.

1                   MR. LEVICK: So, Your Honor, I apologize. We  
2 don't try to operate that way, especially with a pro se  
3 debtor. We don't try to hide the ball or anything like that.  
4 But this is -- you know, I'm scrambling around trying to get  
5 ready on a last second notice because we have stuff strictly  
6 calendered at our firm for certain dates. And I really  
7 thought that we were set two weeks from today. But in any  
8 event.

9                   But in the Smith case -- and Mr. Lewis can address,  
10 he's going to address the other myriad of reasons why she  
11 can't have a valid homestead. But even if she does, we have  
12 the second lien that will foreclose her out any way, should  
13 we choose to foreclose. So what we're left at right now is  
14 you have a first line for 800; a property worth 1.50 million;  
15 the third lien holder we will either foreclose out or they  
16 will again agree to take a very nominal amount of money. And  
17 this is a -- our big asset in this case. And it would be an  
18 injustice to have Mr. Jacobsen who has twice thwarted us to  
19 render, resolve and sell this. To somehow have this property  
20 go to his wife would defeat the whole purpose of the  
21 Code, Your Honor.

22                   Excuse me one second.

23                   So just to recap, there's no emergency. There's no  
24 motion for relief from stay. We have a very reasonable first  
25 lien holder. And I would ask that the objection be denied,

1 Your Honor. And I may have a few other exhibits to offer, if  
2 that's all right. If you want me to do that at this time.

3 THE COURT: No. I'm going to let you do it in  
4 response. I think we're -- we kind of started off in the  
5 wrong direction. Mr. Jacobsen should have gone first.

6 But before we do that, why don't you give me a copy of  
7 that case and I'll have somebody photocopy it and bring it  
8 back out so Mr. Jacobsen can have a copy also.

9 If you'll just wait a minute. Shirley, why don't you  
10 just go ahead and ask somebody to copy it. Have them bring  
11 out three copies.

12 MR. LEWIS: Your Honor, whiles he's doing  
13 that, Mr. and Mrs. Sramek filed an objection to the motion  
14 yesterday morning. I don't know if the Court has seen that.

15 THE COURT: I don't think I have.

16 MR. LEWIS: If I may approach, I don't have  
17 any extra copies. A copy was emailed to Mr. Jacobsen  
18 yesterday, as well as to Mr. Levick. But I have -- I have a  
19 hard copy that I can hand up to the Court, if you'd like.

20 THE COURT: All right. Mr. Jacobsen, have you  
21 seen this?

22 MR. JACOBSEN: No. I was on a plane  
23 yesterday.

24 THE COURT: Okay. Why don't you give it to  
25 Mr. Jacobsen.



1                   MR. JACOBSEN: And I haven't seen any email  
2 from them at all.

3                   MR. LEWIS: I can hand up Mr. Levick's copy to  
4 the bench.

5                   THE COURT: All right.

6                   MR. LEWIS: Your Honor, isn't it a -- I mean,  
7 it's a little short notice for me to read over a 50 page  
8 document standing here in court.

9                   THE COURT: I'd agree with that. Let me just  
10 see what we're talking about here.

11                  Mr. Lewis, this indicates that, am I wrong on this, but  
12 that this is your objection?

13                  MR. LEWIS: This is our objection, yes, Your  
14 Honor.

15                  THE COURT: Okay. Is there some reason you  
16 didn't furnish it to Mr. Jacobsen?

17                  MR. LEWIS: I sent it by email to him  
18 yesterday at his email address. He has his laptop computer  
19 here with him.

20                  MR. JACOBSEN: I checked my email. There was  
21 no email from them.

22                  MR. LEWIS: And I sent an email -- the same  
23 email was sent to Mr. Levick and he got his copy.

24                  MR. LEVICK: Your Honor, Mr. Jacobsen -- I  
25 sent him an email yesterday, an exhibit, and he told me he

1 was having computer problems. So I don't know which it is,  
2 Your Honor.

3 MR. JACOBSEN: I am having computer problems.  
4 It seems to be getting email okay, but I can't -- I wanted to  
5 file something on Pacer and it wouldn't allow me to do it.  
6 So I'm having -- I am having computer problems. But -- and  
7 emails have a way of getting lost. Maybe it's in my spam  
8 filter or something.

9 THE COURT: Okay. Just a minute before we get  
10 started.

11 Mr. Jacobsen, I'm going to let you proceed.

12 MR. JACOBSEN: Okay, Your Honor.

13 I'm a slow reader and I don't -- Mr. Levick has gone  
14 into a long dissertation of things that don't relate to  
15 this -- to what my motion is. My motion basically is that  
16 the house is homesteaded and it's protected. Who owns the  
17 second mortgage is not really an issue. We're both okay with  
18 the fact that the Trustee owns the second mortgage. That  
19 actually works in our favor. He brought it up -- he referred  
20 to it as a red herring that I was bringing up. But all of  
21 this he brought up was to try to distract the Court away from  
22 the fact that the house is homesteaded. The exhibit in my  
23 motion shows that it's homesteaded. And the case law --  
24 excuse me, the law regarding homestead in California, which  
25 is CCP704.730 exempts -- it -- excuse me. That gives the

1 6rules under which a homestead is followed. And it -- and a  
2 homestead has to be -- the person has to live there, of  
3 course, which she has for the last -- since 2001. And it  
4 also covers the house upon sale for six months after the  
5 sale. So a person puts the house on the market, sells it,  
6 puts the money in the bank, I guess, and then has six months  
7 in which to buy another house.

8 In this case the house was put on the market to sell.  
9 A buyer --

10 THE COURT: Let me just ask you a question.

11 As I understand it, you don't dispute that the Trustee  
12 owns the second mortgage; is that right?

13 MR. JACOBSEN: No. That's not part of my  
14 motion. I don't dispute that.

15 THE COURT: And what's your opinion of the  
16 value of the property?

17 MR. JACOBSEN: I think it's probably close to  
18 what they're asking, maybe a million dollars, maybe 950.

19 THE COURT: So how much will the second lien  
20 use of any value on the property? How much is there above  
21 the second lien?

22 MR. JACOBSEN: That -- nothing.

23 THE COURT: Nothing. Well, if the Trustee  
24 owns the second lien and you admit that, then what are we  
25 fighting about?

1                   MR. JACOBSEN: Well, I don't have a problem  
2 with the loans that are on the property, including the Wells  
3 Fargo loan. I believe in paying back debts that are  
4 borrowed. So I would eventually probably pay back the Wells  
5 Fargo loan, even though they're in a very tenuous position.  
6 But if the Trustee owns the second mortgage than we would  
7 just make payments on the second mortgage just as they're  
8 called for in the note.

9                   THE COURT: Have there been payments made as  
10 this case has gone along?

11                  MR. JACOBSEN: There were no payments called  
12 for on the note, originally. So it was an interest only with  
13 the payments --

14                  THE COURT: Have the interest payments been  
15 paid?

16                  MR. JACOBSEN: They're just accruing. It's  
17 with the note. The note calls for the payments that accrued.

18                  THE COURT: All right. You may proceed.

19                  MR. JACOBSON: So the house was out on the  
20 market to sell before I filed bankruptcy. The buyer, the  
21 Davis', were found and were ready to close. One business day  
22 before close the sale was stopped by an action of law. An  
23 attorney in California representing the Srameks filed a lis  
24 pendens which was later found to be completely improper and  
25 was expunged. But it managed to stop the sale. We didn't

1 get -- I didn't get my commission from selling what I thought  
2 was her house because we then at the time felt that it was  
3 separate property. And it forced me to file bankruptcy.

4 The house was never rented out before that. But the  
5 Davis' had sold their house and they needed a place to live  
6 and so there was an agreement of what's called an --

7 THE COURT: Okay, excuse me.

8 MR. JACOBSEN: -- interim occupancy agreement  
9 that Mr. Levick refers to the house being rented out for two  
10 years. And that's strictly because this bankruptcy has been  
11 going on for two years. The house was never intended to be  
12 rented out as a rental.

13 The homestead law, as I said, covers it for six months  
14 after the sale any way. So the bankruptcy, as I understand,  
15 tolled the period of time in which case Alyse Malikyar's  
16 homestead would still be valid on the property. And, in  
17 fact, she still owns it in her eyes.

18 The argument with this motion is that it was improper  
19 for the Court to actually take possession of the house for  
20 the Trustee that is a homesteaded property. It does not show  
21 as a homesteaded property on my schedules because they're my  
22 schedules. They're not her schedules. She's not in  
23 bankruptcy.

24 Let me address some of the things that Mr. Levick just  
25 brought up. And these are all the red herring items I was

1 talking about, but I'd like to address them any way.

2 He mentioned that I filed my bankruptcy in bad faith.  
3 I filed it on my own just as myself and I did not put my  
4 wife's assets on my schedules. That was the advice I was  
5 given by my attorney at the time. We went ahead. The Court  
6 decided that I should have scheduled my wife's assets on  
7 there also, and so I added he assets on an amended schedules.  
8 This was why it was determined to have been in bad faith. I  
9 was just going by the advice of my attorney. I just  
10 scheduled properties that I owned, which is three or four.

11 So as the Court told me to do, I've added properties on  
12 there. That was the bad faith.

13 We've had a prenuptial and postnuptial agreement both.  
14 They are not required to be recorded. You would not want to  
15 record them, just as you would not want to record a will.  
16 And they're not required to be notarized. But  
17 Mr. Levick insists on bringing up how they weren't recorded  
18 nd weren't test. But they're not required to be. And a  
19 person wouldn't want to. It's private information.

20 There was a show cause hearing mentions where the tired  
21 to make a connection between me and coast Capital. Mr.  
22 Moser, the Trustee, was asked if he had any evidence at all  
23 that I was at all connected with Coast Capital. And he said,  
24 No. We have no evidence that you're connected at all.

25 The attorney --

1                   MR. LEVICK: Your Honor, I'm going to object.  
2 Mr. Moser, I don't recall testified at that hearing.

3                   MR. JACOBSEN: He said it in his deposition  
4 before that.

5                   MR. LEVICK: That wasn't an exhibit to the  
6 hearing. And I don't know how that's --

7                   THE COURT: That's not the way of getting that  
8 in as evidence, so objection sustained.

9                   MR. JACOBSEN: So the reason for the show  
10 cause was an attorney representing Coast Capital had  
11 mentioned the had talked to me and I had claimed to be an  
12 attorney representing -- he was representing Coast Capital.

13                  Well, he came into court in the show cause and he said,  
14 Well, you know, I was mistaken.

15                  MR. LEVICK: Your Honor, I'm going to object.  
16 We had two long days on this show cause hearing and Mr. Greg  
17 Meyer's testimony was very unequivocal. He was not mistaken.  
18 He testified he spoke to Mr. Jacobsen who represented himself  
19 to be the representative of South Shore Capital and that was  
20 the testimony in this court. So -- and Judge Rhoades has  
21 taken that under advisement and we're awaiting her ruling on  
22 Judge Rhoades' show cause order, Your Honor.

23                  THE COURT: What's her show cause order about?

24                  MR. LEVICK: It is -- it was an order to show  
25 cause against Mr. Jacobsen, South Shore Capital, the

1 representative of South Shore Capital Laurie Share -- hold  
2 on, Your Honor.

3 May I approach?

4 THE COURT: You may.

5 MR. LEVICK: May I approach with our exhibit  
6 book?

7 THE COURT: You may.

8 I assume that a copy of this has been furnished to Mr.  
9 Jacobsen?

10 MR. LEVICK: Yes. We -- well, we sent it last  
11 Thursday or Friday, I don't know. Did you get --

12 MR. JACOBSEN: I have never received it, no.

13 MR. LEVICK: Your Honor, we emailed him and  
14 mailed everything last Thursday, but I'll furnish him with a  
15 book. I didn't send him a book. I sent him all of the  
16 things separately. I bound everything yesterday.

17 Your Honor, as you may note, I put our exhibit list  
18 together, but Exhibit 4 is the order to show cause, Tab 4.

19 THE COURT: Okay. Let me just look at that.

20 Okay. You may proceed.

21 MR. JACOBSEN: What he just said is completely  
22 untrue and it's been happening through this case. Mr. Levick  
23 is making claims that things that Mr. Meyer had said in -- I  
24 don't want to go over with you two days of testimony at the  
25 show cause hearing.



1                   THE COURT: If you're going to have any  
2 evidence from that hearing, you're going to have to have some  
3 sort of record of it and submit it to me. I'm just not going  
4 to take your word for what it is, or I'm not going to take  
5 Mr. Levick's word for what it is. I'm new to this case. I  
6 have no knowledge of it. And that wouldn't be the way to  
7 present it.

8                   MR. JACOBSEN: And you know what, it has  
9 absolutely no relevance to what we're talking about here. I  
10 don't see the connection at all. I'm just arguing because I  
11 don't like to hear things that are untrue.

12                  THE COURT: Okay.

13                  MR. JACOBSEN: But what my connection is with  
14 Coast Capital, it -- they don't have any evidence of any  
15 connection at all. There is an order to show cause. We had  
16 it. We haven't got a ruling on it. But I can't imagine  
17 anything would come of this, because Mr. Meyer completely  
18 changed his story once he got into court.

19                  MR. LEVICK: Objection, Your Honor.

20                  MR. JACOBSEN: I don't know what else to say.  
21 It's just an order to show cause. It didn't turn out to be  
22 true. But Mr. Levick is going on and on like it is true.  
23 And I don't know how to combat these things. I don't know.  
24 I just want to move on from that.

25                  THE COURT: Okay. You may proceed.

1           How much time do you anticipate having -- needing to  
2   present your side of the case?

3                   MR. JACOBSEN:   Not very much.   Maybe 20  
4   minutes.

5                   THE COURT:   All right.   I'll give you 20  
6   minutes.

7                   MR. JACOBSEN:   There you go.

8           The house -- the sale of the house was objected to by  
9   myself and my wife because it was believed that it was not  
10   part of a bankruptcy.   It was a separate property and it  
11   shouldn't be sold.   That was always the position.   That was  
12   always the feeling of my wife that it was her house.   She  
13   bought the house with her money.   She got the loan strictly  
14   in her name.

15                   MR. LEVICK:   Your Honor --

16                   MR. JACOBSEN:   The prenuptial agreement that  
17   Mr. Levick has mentioned.

18           I let you speak and I just listened.   Please let me  
19   speak.

20                   THE COURT:   I'm sorry, what's your objection?

21                   MR. LEVICK:   Objection; he appears to be sort  
22   of a hearsay objection.   This is really Ms. Malikyar's  
23   testimony.   This wouldn't be Mr. Jacobsen's testimony.

24                   THE COURT:   Okay.   To the extent that's an  
25   objection, it's overruled.

1           You may proceed.

2                   MR. JACOBSEN: I lost track of where I was.

3           It has always been considered to be both -- excuse me,  
4 considered to be her property. She got the loan strictly in  
5 her name. The prenuptial -- and the postnuptial agreement  
6 actually specifically mentions that house as being separate  
7 property of her's. And so when she and I objected to the  
8 sale of the property, it was on the basis that it wasn't part  
9 of the bankruptcy. That was our primary reason. Much later  
10 it was agreed to be community property in November.

11           The homestead exemption is for \$150,000. I really  
12 don't think that the dollar amount is really at issue here.  
13 It's really that it's homesteaded and it should not be sold  
14 by the Court. But if you go down the other road that the  
15 \$150,000 exemption you take the first mortgage of 800,000 and  
16 you add 150,000 to it that would go to her, if the Trustee  
17 sells the property for 950, he gets nothing. And that's  
18 about what it's worth. If he sells it for a 1.10 million and  
19 has to pay a sales commission, he gets nothing. And if he  
20 sells it for 1.20 million and pays Wells Fargo its 10,000, I  
21 mean, they're up to the full asking price and they get  
22 nothing. And so he's arguing about selling the property  
23 saying he has all of this money that's going to come to the  
24 estate, but there's no money that's going to come to the  
25 estate. This property should be released back to Alyse

1 Malikyar and now myself. And -- because it's -- number one,  
2 because it's homesteaded, just plain and simple, according to  
3 CCP704730 and/or as a second argument that the \$150,000  
4 would -- there wouldn't be any equity any way, even if it  
5 were sold.

6 All of this talk about the show cause hearing, I mean,  
7 all of these things really don't -- I don't see where they  
8 have any relevance. We're in agreement that it looks like  
9 now that the Trustee owns the second mortgage on the property  
10 and it will remain on the property after it's abandoned back.

11 That's all I have.

12 MR. LEWIS: Your Honor, for clarification, was  
13 that an argument, or an opening statement, or a proffered  
14 testimony, or some combination of that?

15 THE COURT: Mr. Jacobsen, I'm taking that --  
16 that's your -- what you're offering in evidence today; am I  
17 correct on that?

18 I can't tell you how to present your case. I'm just  
19 asking you --

20 MR. JACOBSEN: I'm not a very good lawyer,  
21 Your Honor. But that was what I would call my side of the  
22 story.

23 THE COURT: So that's your evidence; am I  
24 correct?

25 MR. JACOBSEN: Your evidence is the Exhibit A

1 which shows that its' homesteaded by my wife. And I have --  
2 I do have my documents also that I brought. But they're  
3 basically copies of the Code, which I don't really have to  
4 get -- just for convenience sake of the Court. And I had an  
5 article written by an attorney on bankruptcy law that would  
6 be more eloquent than I could do. So I put a copy of that in  
7 there where he states that it's homesteaded and protected and  
8 the Court should not sell something that's homesteaded. So I  
9 have those documents with me.

10 THE COURT: So do I understand that you're  
11 resting at this point?

12 MR. JACOBSEN: Yes.

13 THE COURT: All right.

14 MR. JACOBSEN: Do you want me to present this  
15 stuff?

16 THE COURT: It's your case. Whatever you want  
17 to do with it.

18 MR. LEVICK: Your Honor, these appear just to  
19 be statutes that he's given us.

20 MR. JACOBSEN: Yeah. They're not traditional  
21 exhibits, I know. I underlined the areas of the Code that  
22 are applicable. I know you wouldn't normally put copies of  
23 the Code in there.

24 THE COURT: Okay. I'll put this as Jacobsen  
25 Number 1.

1                   MR. JACOBSEN: There's three documents in  
2 there.

3                   THE COURT: Consisting of three documents.  
4           It will be admitted, to the extent it has any value.  
5           You may proceed.

6                   MR. LEWIS: Your Honor, first with respect,  
7 just to state on the record, he attached an Exhibit A to the  
8 motion. We would object to that being evidence because it's  
9 not properly authenticated. It's not a certified copy. And  
10 there's been no evidence proving it up as an authentic copy  
11 of what might be in the records in California.

12                  MR. JACOBSEN: It's just a copy of a tax  
13 earlier, Your Honor. It's something that I think came to me  
14 as a copy from the County, or came to my wife. Any way, the  
15 homestead is public record.

16                  THE COURT: Are you talking about the tax  
17 bill? Is that what we're talking about?

18                  MR. JACOBSEN: Yes. The last page of the  
19 motion.

20                  THE COURT: And, I'm sorry, the objection?

21                  MR. JACOBSEN: The objection is two-fold.  
22 First, it's not a properly authenticated public record.  
23 Second, we would object on the basis of hearsay on the basis  
24 that it's a document being offered for some purpose and it's  
25 an out-of-court statement.

1           And since it's not properly authenticated as a public  
2 record, it doesn't come in under that exemption.

3                   THE COURT: The objection is sustained. You  
4 may proceed.

5                   MR. JACOBSEN: Homestead is automatic in  
6 California any way. There's no filing. There's nothing  
7 needed to do that. It's -- if you live in the house, it's  
8 homesteaded.

9                   MR. LEWIS: Your Honor, what Mr. Jacobsen just  
10 said is the crux of this case, to the extent whether it's a  
11 homestead or not is even relevant to a motion to abandon.

12           First, we believe -- I would submit that a motion to  
13 abandon --

14                   THE COURT: Let me -- before we get started,  
15 Mr. Lewis, I'm going to get a time estimate from you too.  
16 I'm going to try to keep you all pretty much on time  
17 estimates.

18                   MR. LEWIS: Ten minutes and I'd like five  
19 minutes to cross-examine Mr. Jacobsen.

20                   THE COURT: Why don't you cross-examine him  
21 first and then take your ten minutes.

22           Mr. Jacobsen, please raise your right hand and be  
23 sworn.

24                   (The witness was sworn by the courtroom deputy.)

25                   THE COURT: Mr. Jacobsen, take the stand over

1 there.

2 ROBERT JACOBSEN

3 The witness, having been duly sworn to tell the truth,  
4 testified on his oath as follows:

5 CROSS-EXAMINATION

6 BY LEWIS:

7 Q. Mr. Jacobsen, do you recall what date you filed for  
8 Chapter 13 protection in this court?

9 A. I do not.

10 Q. All right. Is it May of 2007?

11 A. That's what I recall, May of 2007.

12 Q. And as of May of 2007 who was residing in what we  
13 call the Tice Valley property?

14 A. My wife was residing there and I was there quite a  
15 lot as a second home of my own.

16 Q. Okay. When did Mr. and Mrs. Davis move into that  
17 house?

18 A. I could -- it's some time about that same time. I  
19 can't remember. The house was sold right around that.

20 Q. So it's your testimony under oath, Mr. Jacobsen,  
21 that on the date that you filed for bankruptcy in this court,  
22 you and your wife were physically living in the Tice Valley  
23 house in California?

24 A. That is not my testimony. I don't recall the  
25 dates. We moved about that time. We may have moved just



1 prior, just barely before that. It all happened about that  
2 same time.

3 Q. Okay. Now, before you --

4 THE COURT: Let me interrupt. I don't  
5 understand your testimony. You're saying you were in the  
6 house at that time or you were not?

7 THE WITNESS: No. I'm saying I don't recall  
8 as far as the date goes because it all happened --

9 THE COURT: You don't recall one way or the  
10 other?

11 THE WITNESS: I don't. Actually, we may have  
12 moved just prior to me filing. I don't remember.

13 THE COURT: Moved in or moved out?

14 THE WITNESS: Moved out of the house where the  
15 Davis' -- I just don't remember. A lot of things happened  
16 very quickly right about that time.

17 Q. Isn't it true, Mr. Jacobsen, that before you filed  
18 bankruptcy in this court you and your wife had purchased  
19 property in Lafayette, California which we refer to as the  
20 Vista Bella property?

21 A. That's incorrect.

22 Q. What's incorrect about that?

23 A. My wife purchased -- it's a business partnership  
24 that she was involved in that I wasn't involved in.

25 Q. And isn't it true that when you bought -- when your

1 wife bought the property called Vista Bella, you and your  
2 wife moved into that property?

3 A. That is true.

4 Q. And since you filed for bankruptcy in this court  
5 you and your wife, Ms. Malikyar, had been living in the Vista  
6 Bella property continuously?

7 A. Yes.

8 Q. In fact today -- as of today, you and Ms. Malikyar  
9 are living at the Vista Bella property?

10 A. It's Malikyar. And, yes.

11 Q. And since filing for Chapter 13, you and your wife  
12 have not resided in the Walnut -- in the Tice Valley  
13 property, have you?

14 A. Other than my recollection of the exact date we  
15 moved, that would be a true statement.

16 Q. And since you filed for bankruptcy the people that  
17 had been living in Tice Valley had been Mr. and Mrs. Davis,  
18 the people you're wanting to sell it to, right?

19 A. Yes.

20 Q. And, in fact, you entered into that contract to  
21 sell the Tice Valley property to Mr. and Mrs. Davis before  
22 you filed for bankruptcy, didn't you?

23 A. No.

24 Q. You entered into that contract after filing for  
25 bankruptcy?

1           A.    I've never been in a contract to sell that.

2           Q.    Your wife did.

3           A.    Restate your question.

4           Q.    Your wife a contract to sell the property to Mr.  
5 and Mrs. Davis before you filed for bankruptcy, didn't she?

6           A.    Yes.

7           Q.    And that sale was pending when you filed for  
8 bankruptcy, wasn't it?

9           A.    Yes.

10          Q.    And isn't it true that your wife -- do you know  
11 what -- tell the Court what you believe you have to do to  
12 declare a homestead in California.

13          A.    It is my belief in California that the homestead is  
14 automatic if you live in it. There's not a document that  
15 needs to be filed to make it a homestead.

16          Q.    Now, you're a licensed real estate broker in  
17 California, aren't you?

18          A.    Yes.

19          Q.    And isn't it true, Mr. Jacobsen, that in order to  
20 declare a homestead in California, you actually have to file  
21 what's called a declaration of homestead?

22          A.    That's not true.

23          Q.    What's -- what do you file to inform the  
24 authorities that you're declaring property a homestead?

25          A.    As I said, you don't have to file anything. In

1 Texas you do. I believe you do in Texas. But in California  
2 you do not. There is a form you can file, the form  
3 admission. But it's not required. It's automatic.

4 Q. Isn't it true, Mr. Jacobsen, that this form that  
5 you can file, your wife had not filed that form in California  
6 designating or declaring Tice Valley as a homestead as of the  
7 date that you filed for bankruptcy, right?

8 A. I don't know what my wife did or didn't file.

9 Q. Okay. And you don't have a copy for the Court of  
10 any declaration or designation of California homestead filed  
11 by your wife, do you?

12 A. All I have is the tax bill showing it's homestead.

13 Q. And all of the things on that tax bill is whether  
14 it might be considered exempt for tax purposes, right?

15 A. It has -- it shows it's homesteaded very clearly.

16 Q. But it doesn't show who's declaring -- strike that.

17 Now, you testified in a California case and deposition  
18 shortly before filing for bankruptcy, didn't you?

19 A. I don't know which case you're talking about.

20 Q. Okay. Didn't you testify in a deposition in  
21 California that you were living in Texas and your wife was  
22 living in Texas with you?

23 A. She and I both have two homes. At that time we had  
24 two homes.

25 THE COURT: What time are we talking about?

1                   THE WITNESS: Just some time before. I'm not  
2 sure he's a bit vague on his date, too. But we were out of  
3 the country for two years where we were on a sailboat in the  
4 Caribbean and we used an address in Texas, in Frisco. I had  
5 a secretary handling my bookkeeping and things and that was  
6 my -- my address for then. After we returned, I lived in  
7 Allen in a house on Springs Way.

8                   THE COURT: I have no idea where that is. Is  
9 that in Texas or California?

10                  THE WITNESS: Allen, Texas.

11                  THE COURT: Oh, Allen. Okay. I didn't  
12 understand you.

13                  THE WITNESS: I'm sorry. I've got a cold.

14                  Q. Mr. Jacobsen, I handed you earlier today a copy of  
15 the objection that was filed by Mr. and Mrs. Sramek yesterday  
16 to your motion. Attached to that objection were some pages  
17 of a deposition transcript for you in that California case.

18                  Did you read those?

19                  A. No, I didn't get to that.

20                  Q. Okay. Do you have that with you?

21                  A. No.

22                  Q. Is that over there on your -- I'd like to retrieve  
23 the copy I gave him so I can show him and ask him about it.

24                  THE COURT: All right. You may.

25                  Q. Can you tell me where it is?

1           A.    I can see it on top with the blue edge on it there.

2           You're welcome to bring that.

3           Is that correct?

4           Q.    No.   This is what Mr. --

5           A.    I don't have -- didn't bring my glasses with me.

6           It's not here.   I guess I don't have it.

7                       MR. LEWIS:   Your Honor, I know that I handed  
8 my copy to Mr. Jacobsen.   I handed the Court Mr. Levick's  
9 copy.   That's why we have no copies down here.

10          A.    Everything you handed me is right here.

11                       THE COURT:   Apparently it's on the table right  
12 there.

13                       MR. LEWIS:   May I approach the witness, Your  
14 Honor?

15                       THE COURT:   You may.

16                       MR. LEWIS:   And for the Court and for the  
17 record, I'm referring to Exhibit 2 to the objection.

18          Q.    Mr. Jacobsen, I'd like you to read to yourself the  
19 Exhibit 2 to that objection which is a -- pages from an April  
20 2nd, 2007 deposition transcript of you in the California  
21 case.   And when you finish, would you tell the Court if  
22 that's a true and correct copy of the transcript, as best as  
23 you recall?

24          A.    I can make the same objection to this as you made  
25 about my tax bill, this is not a certified copy?

1                   THE COURT: Okay. I'm overruling it at this  
2 time.

3                   THE WITNESS: Okay.

4           A.     And you want me to read the whole thing?

5           Q.     And tell me if that testimony that you gave in that  
6 deposition is transcribed as true and correct?

7           A.     Okay.

8           Q.     Is there anything wrong in that transcript?

9           A.     Anything wrong? Can you be more specific?

10          Q.     Well, did they -- is that -- was that testimony  
11 true and correct when given?

12          A.     Well, I just scanned through it quickly. I don't  
13 think I'd want to be held to every word in this being correct  
14 or not correct.

15          Q.     You were under oath when you gave that testimony;  
16 were you not?

17          A.     Yes.

18          Q.     And you did not notify the court reporter of any  
19 corrections or errors in the transcript of that deposition,  
20 did you?

21          A.     I don't recall.

22          Q.     And didn't your testimony in April of 2007 state  
23 that Ms. Malikyar, your wife, lived with you here in Texas at  
24 the homestead you were claiming, a residence you were  
25 claiming here in Allen?

1           A.    You used the word "homestead", that's not correct.

2           Q.    Turn to Exhibit 1 of that document, please.

3           Do you recognize that as a preliminary title report for  
4 the sale of the Tice Valley property prepared in 2007?

5           A.    Do you want me -- it's many pages.  Do you want me  
6 to look at anything in particular?

7           Q.    No.  I just was asking, is that -- does that appear  
8 to you to be the preliminary title report for the sale of the  
9 Tice Valley property to the Davis' in 2007?

10          A.    It does appear to be that.

11          Q.    What's the date on it?

12          A.    June 15th, 2007.

13          Q.    After you filed your Chapter 13?

14          A.    This would be after it, yes.

15          Q.    Okay.  And it was prepared for -- well,  
16 Ms. Malikyar, correct?

17          A.    Malikyar.

18          Q.    Malikyar.

19                That's prepared for her as the seller, right?

20          A.    Yes.

21          Q.    Is there any place on that preliminary title report  
22 that states that the property being sold, i.e.  the Tice  
23 Valley residence, was a homestead?  It had a homestead  
24 designation or a homestead declaration?

25          A.    I don't believe it says that.  It doesn't normally